

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:10cv076**

JULI ANN O. NISHIMUTA,)
)
 Plaintiff,)
)
 vs.)
)
KATHLEEN SEBELIUS,)
SECRETARY OF HEALTH AND)
HUMAN SERVICES,)
)
 Defendant.)
_____)

**PRETRIAL
SCHEDULING ORDER**

IT APPEARING TO THE COURT that the defendant Secretary has answered and filed transcripts herein, that the issues are ripe for this Court's review in the captioned Medicare appeal and no stay has been entered.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff shall file a Motion for Summary Judgement and Supporting memorandum of law within 60 days of the filing of this Order. The Plaintiff appears in this matter in a *pro se* status. Out of an abundance of caution, the Court will provide the notice dictated by the United States Fourth Circuit Court of Appeals in Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975).

The Plaintiff is cautioned that he carries a heavy burden in responding to a motion for summary judgment. Rule 56(e) of the Federal Rules of Civil

Procedure provides:

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must—by affidavits or as otherwise provided in this rule--set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

Fed.R.Civ.P. 56(e)(2).

This language means that if the Plaintiff has any evidence to offer to show that there is a genuine issue for trial, he must now present it to the Court in a form which would otherwise be admissible at trial; that is, in the form of affidavits or unsworn declarations. An affidavit is a written statement made under oath; in other words, a statement prepared in writing and sworn before a notary public. An unsworn statement, made and signed under the penalty of perjury, may also be submitted.

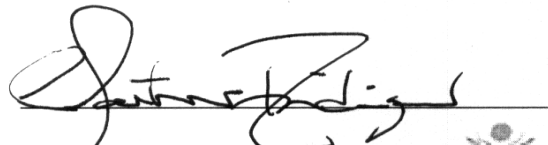
Affidavits or statements must be presented, if at all, by the Plaintiff to this Court on or before the sixtieth (60th) day after the entry of this Order. As stated in Rule 56(e)(2), the Plaintiff's failure to respond may result in the entry of summary judgment in favor of the Defendant.

2. The Secretary shall file her Memorandum of Law in Opposition no later than 60 days from service of Plaintiff's motion and supporting memorandum; and
3. A Motion for Summary Judgement routinely will be decided on the

3. A Motion for Summary Judgement routinely will be decided on the pleadings submitted. Oral arguments shall be the exception rather than the rule. A motion requesting hearing of oral arguments, if any, must be filed with the party's memorandum of law and must provide good reason for allowing the request.

IT IS SO ORDERED.

Signed: July 16, 2010


Martin Reidinger
United States District Judge

